

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Broadcast Content Protection)	MB Docket No. 02-230
)	

**JOINT PETITION FOR RECONSIDERATION OF
THE NATIONAL MUSIC PUBLISHERS' ASSOCIATION,
THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,
THE SONGWRITERS GUILD OF AMERICA
AND BROADCAST MUSIC, INC.**

December 31, 2003

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The National Music Publishers' Association ("NMPA"), The American Society of Composers, Authors, and Publishers ("ASCAP"), The Songwriters Guild of America ("SGA"), and Broadcast Music, Inc. ("BMI") (hereinafter "Petitioners") hereby request, pursuant to 47 C.F.R. § 1.429, that the Commission reconsider certain aspects of its Report and Order and Further Notice of Proposed Rulemaking ("R&O and FNPRM"), FCC 03-273 (Adopted: Nov. 4, 2003; Released, Nov. 4, 2003) in the above-captioned proceeding that arbitrarily disadvantage owners of copyright in audio sound tracks (music).

I. Introduction

The R&O and FNPRM issued in this proceeding contains one of the same flaws as the Commission's Second Report and Order and Second Further Notice of Proposed Rulemaking in the Commission's cable television plug and play proceeding.¹ That is, it arbitrarily and erroneously fails to protect the audio channel of digital television programming in a way that leads to an irrational result: the audio channel of an audiovisual work, which has suffered serious piracy problems, receives a lower standard of protection than the video channel of an audiovisual work, for which no independent market exists. The R&O and FNPRM confers on the video signal a level of protection that is not provided to the audio channel when it is stripped from the audiovisual work. In doing so, the Commission has relied upon materially

¹ In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80 and Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 03-225 (Adopted: Sept. 10, 2003; Released, Oct. 9, 2003).

erroneous information provided to it by the Motion Picture Association of America (MPAA) in an *ex parte* letter that Petitioners had no opportunity to rebut.

II. Standard of Review

For the standard of review applicable to petitions for reconsideration, please see the discussion in Petitioners' Petition for Reconsideration in the Commission's cable plug and play proceeding. In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80 and Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67, *Joint Petition for Reconsideration of the National Music Publishers' Association, the American Society of Composers, Authors and Publishers, the Songwriters Guild of America and Broadcast Music, Inc.* at page 5 (December 29, 2003) (hereinafter, "Joint Petition for Reconsideration").

III. Discussion

A. The Commission's Rules in this Docket, Relying on an Erroneous Ex Parte Filing, Establish an Arbitrary Disparity between Treatment of Copyrights in the Video Channel and those in the Audio Channel, Without Any Factual or Legal Basis.

Petitioners object to the arbitrary treatment in this proceeding of the musical works that make up the audio portion of the audiovisual content delivered over broadcast television, in comparison to the regulatory protection mandated for the video channel of the same content. This inferior treatment will threaten legitimate Internet music delivery services and other legally authorized modes of music distribution well outside the "ancillary" jurisdiction of the Commission. The regulations approved by the Commission permit digital audio data to be

output “in the clear” (*i.e.*, without any copyright protection) while at the same time imposing detailed requirements for copy protection of the digital video outputs. Nothing in the record of this proceeding justifies the arbitrary distinction between audiovisual works and the musical tracks making up the soundtrack, which, in accordance with the Commission’s rules, are unprotected when they are separated from the audiovisual works. The only statement in support of such disparate treatment is a letter filed by the Motion Picture Association of America (MPAA) in response to an inquiry made by the Commission staff at an *ex parte* meeting at which the MPAA and the Commission discussed the Petitioners’ position in this and the cable plug and play proceedings.

In their Petition in the Commission’s plug and play proceeding, Petitioners have spelled out in detail the problems with the MPAA letter (both its procedurally flawed presentation and its factually incorrect assertions), and the consequences of this disparate treatment. Accordingly, rather than replay that discussion, Petitioners hereby incorporate it by reference. See *Joint Petition for Reconsideration* at 6-10.

B. *The Commission Should Revise its Rules to Prevent Piracy of the Digital Audio Channel while Maintaining Digital Audio Device Compatibility.*

Of particular concern to Petitioners is Section 73.9005 Compliance Requirements for Covered Demodulator Products, which currently reads as follows:

Except as otherwise provided in §§ 73.9003(a) or 73.9004(a), Covered Demodulator Products shall not output the audio portions of Unscreened Content or of Marked Content in digital form except in compressed audio format (such as AC3) or in Linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no more than 16 bits/sample. The requirements of this section shall become applicable on July 1, 2005.

The exceptions to output of audio (“in compressed audio format (such as AC3) or in Linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no

more than 16 bits/sample”) constitute CD-level sound quality. As such, they are too broad and would allow music piracy to continue and worsen, and therefore should be revised. Such revisions will also facilitate the production of content for digital broadcast TV, thus furthering the goals enunciated by the Commission. Again, the reasons for protection from stripping of audio in the clear are set forth in some detail in Petitioners’ Petition for Reconsideration in the cable television plug and play proceeding. See *Joint Petition for Reconsideration, passim*.

IV. Conclusion

NMPA, ASCAP, SGA and BMI request that the Commission make these important revisions to the regulations it has adopted in this proceeding, and that it stay the effective date of its rules until its decision on this Petition.

Respectfully submitted,

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